IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.213 Of 2000.

Date of decision: July 11th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Jewan Parkash alias Parkash Kalia and another.

……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.C.B. Singh, Dy. Advocate General.

For the respondents: Mr.Ashwani K. Sharma Advocate

Surinder Singh, J (oral):

In this appeal, the appellant-State has assailed the judgment of the Additional Sessions Judge (I), Kangra at Dharamshala, passed in Criminal Appeal No.29/93(37/94), decided on 10th December, 1999, whereby he has set-aside the conviction and sentence passed by the Sub Divisional Judicial Magistrate, Amb, in Criminal Case No.39-I-1989 and acquitted the respondents, under Sections 420 and457 read with Section 34 of the Indian Penal Code.

The factual matrix giving rise to the present case are that the father of the complainant-deceased Ram Dhan was a

---

Whether reporters of local Papers may be allowed to see the judgment? Yes .

tenant of a shop at Chintpurni. The father of respondents Lal Chand was the landlord. After the death of Lal Chand (owner) aforesaid, the respondents had shown their intention to repair the shop under the tenancy of Sh. Ram Dhan. Thus, Lal Chand had offered another shop temporarily to Shri Ram Dhan and his son Ram Pal, who was looking after the business with him. To workout this arrangement, an agreement Ext.PW2/A dated 4.1.1989 was reduced into writing between the respondents and said Ram Dhan. The agreement was allegedly acted upon, consequently Ram Dhan vacated the tenanted premises for repairs and occupied the another shop of the respondents., in which respondent Rajesh Kumar was also doing his business. It is alleged that after about 5-6 days, the respondents threatened to dispossess Ram Pal and his father from the shop, but to avoid that eventuality, on this Ram Dhan tenant had instituted a civil suit against the respondents and obtained a stay order, but they allegedly refused to take notice of the same. On 29.1.1989, the respondents broke open the lock of the shop of tenant Ram Dhan and picked up the articles from the shop and started their own business in that shop. On 30.1.1989, Ram Dhan came in the morning his shop, he found the respondents sitting in the said shop. He reported the matter to the police, on the basis of which FIR Ext.PW3/B was registered. Consequent there upon, the investigation was conducted. Police prepared Site plan Ext.PW14/A and the lock was taken into possession vide seizure memo Ext.PW14/B. The articles of the complainant were removed from the shop, took into possession vide memo

Ext.PW3/C, and after completing the investigation, the challan was presented in the court under sections 420 and 457 read with Section 34 of the Indian Penal Code. Finding a prima-facie case against the respondents, they were charge-sheeted. The respondents pleaded not guilty and claimed trial.

In order to prove its case, prosecution examined 15 witnesses. The respondents were also examined under Section 313 of the Code of Criminal Procedure. They denied the case and maintain their innocence.

The learned trial court convicted the aforesaid respondents on the ground that an Agreement Ext.PW2/A stood proved. The reliance was placed on the statements of PW13 Ram Pal, PW10 Ruldu Ram and held that the respondents dishonestly induced the deceased Ram Dhan, to deliver the possession of his shop to respondents under a false assurance and they acted in furtherance of their common intention broken open the lock of the shop, which was under the temporary possession of the father of Ram Pal as per Agreement Ext.PW2/A and forcibly occupied the said premises thus held the respondents guilty and sentenced each of them to undergo rigorous imprisonment for a period of one year for each of the offences, under Section 420,457 of the Indian Penal Code and to pay a fine of Rs.1,000/- each. In default of payment of fine, they were further sentenced to undergo simple imprisonment for a period of three months each, under each of the Sections. The case property was ordered to be returned to the complainant Desh Raj and his brother Ram

Pal, sons of Ram Dhan (deceased) after the expiry of the period of appeal or as directed by the appellate court.

The aforesaid order of conviction was carried in appeal by the respondents. Shri Ram Dhan had also filed a civil suit No.27/1989 on 27th January, 1989 against the respondents and their mother Maya Devi, seeking the relief of permanent injunction, on the basis of the Agreement Ext.PW2/A. During the pendency of the suit, Ram Dhan tenant died. His legal representatives were brought on record. A Contempt application under Order 39 Rule 2-A of the Code of Civil Procedure was also filed. The suit and the application aforesaid both were dismissed on 29.2.1996. By way of the additional evidence, the judgment and decree passed by the Sub Judge (Ext.PX) and the order on the application under Order 39 Rule 2-A of C.P.C. (Ext.PY) were allowed to be taken on record as additional evidence by the first appellate Court.

The learned First Appellate Court noticed that the Civil Court had held under issue No.10 that the Agreement Ext.PW2/A was false, fabricated and illegal, therefore, could not be treated as genuine. Thus, after putting reliance on the ratio decidendi of the Apex Court in **M/s Karamchand Ganga Parshad and another** v. **Union of India and others** [**1997, Crl.L.J.1072**] that the Civil Courts decision was binding on criminal courts and once it is found that the complainant party was never put in possession pursuant to the agreement Ext.PW2/A and respondent Rajesh Kumar was not privy to it, therefore, In such circumstances, the question of respondents

having held guilty of the offences charged did not arise at all. Consequently, the judgment and sentence were set-aside.

The judgment of acquittal passed by the First Appellate Court has been challenged on the grounds that the First appellate court did not appreciate the evidence in the right perspective.

The leave to appeal was granted on 10.5.2000 by this Court and now the matter has been finally heard.

Shri C.B. Singh, learned Deputy Advocate General has vehemently argued that there are grounds to convert the judgment of acquittal passed by the first appellate court into conviction and sentence, as passed by the trial court and the view taken by the first appellate court was not correct.

Contra, Shri Ashwani Kumar Sharma, learned counsel for the respondents has forcefully supported the judgment of acquittal passed by the first appellate court.

I have given my thoughtful consideration to the rival contention of the parties.

It is true that the judgment and decree passed by the civil court is binding upon the courts exercising the criminal jurisdiction. The main base of the judgment of conviction and sentence passed by the trial court was that the Agreement Ext.PW2/A stood proved and interim injunction was also issued against the respondents. At that time the civil suit was pending. The first appellate court allowed the application under Section 311 of the Code of Criminal Procedure and the judgment and decree Ext.PY and the order passed on the application under Order 39 Rule 2-A Ext.PX were allowed to be

placed on record as an additional evidence. The first appellate court rightly noticed that Rajesh respondent was not a party to the agreement Ext.PW2/A. The evidence nowhere showed that pursuant to the agreement aforesaid, complainant party was ever put in possession over the disputed shop or the marginal witnesses of the scribe have said so. The explanation given in the statements of the respondents under Section 313 of the Code of Criminal Procedure were also appreciated by the first appellate court. PW Kewal Krishan, a witness to the seizure memo Ext.PW3/A has given a different version that the articles were taken into possession by the police lying on the lintel of respondent Rajesh Kumar. Even the complainant Desh Raj (PW3) has stated that these articles of their shop were taken by the police from the upper storey of the shop of Rajesh Kumar which reinforced the conclusion that the complainant was never put in physical possession. It was clear that respondent Rajesh Kumar was striped of from the lawful possession of the tenanted premises, where he was running his business. This militated against the prosecution. On the conclusion aforesaid, the first appellate court held the judgment of the conviction and sentence rightly unsustainable and set-aside.

It is a settled law that where two views are deducible from the evidence on record, the most favourable to the accused has to be taken into consideration, therefore, the view taken by the first appellate court cannot be said to be perverse. Accordingly, the appeal merits dismissal.

The bail bonds of the respondents, entered upon at any stage during the proceedings of this case stand discharged. The matter is disposed of accordingly.

July 11th, 2007. **(Surinder Singh)**
(PDS) **Judge**.